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IN THE

Supreme Court of the United States

OCTOBER TERM—1961.

No. 686.

MARIA LUISA CRUZ DE ORONA,
Petitioner-Appellant,
against

ANGELA ORONA, As Administratrix *de bonis non* of the Estate of Santiago Orona, deceased,
Plaintiff-Respondent,
against

ISBRANDTSEN COMPANY, INC., UNITED MAIL STEAMSHIP COMPANY,
Defendants-Respondents.

DEFENDANTS-RESPONDENTS' BRIEF.

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DEFENDANTS-RESPONDENTS' BRIEF.

Statement.

The defendants-respondents believe that there is a question of adequacy of representation of the parties to the lawsuit. This action was instituted on May 24, 1960 by the Public Administrator of the Estate of Santiago Orona, deceased. Thereafter, Angela Orona, as Administratrix, was substituted as party plaintiff. The amended complaint seeks recovery for the death of a seaman who was employed aboard the defendants' vessel. The action was brought under the Jones Act, Title 46 U. S. C. 688,

and the Death on the High Seas Act, Title 46 U. S. C. A. 761. The amended complaint alleged as survivors: a widow, Angela Orona, a son, upon information and belief, Mario Orona, a mother, Carmen Orona, and a sister, Carmen Orona Acevedo. In the examination before trial of the plaintiff, Angela Orona, and in the answers of Angela Orona to interrogatories propounded by the defendants, she claims that she has no knowledge of support given to the child, Mario Orona, the mother, Carmen Orona, and the sister, Carmen Orona Acevedo, of the decedent.

POINT I.

The Administratrix must represent all claimants under the statutes.

Under the Jones Act and the Death on the High Seas Act, only the representative of the decedent may bring an action. *Reading Co.* v. *Koons*, 271 U. S. 58 (1926); *O'Neill* v. *Cunard White Star, Ltd.*, 69 F. Supp. 943 (S. D. N. Y. 1946), affirmed, 160 F. 2d 446 (2 Cir.), cert. denied, 332 U. S. 773 (1947). The Administratrix owes a duty of absolute loyalty to and impartiality with regard to all beneficiaries. *In Re Redfern's Will*, 109 N. Y. Supp. 2d 74.

POINT II.

Amounts and apportionment of recovery must be determined by the court at the trial.

The Death on the High Seas Statute, 46 U. S. C. A. 761, specifically provides in 762 as follows:

> "The recovery in such suit shall be a fair and just compensation for the pecuniary loss sustained

> by the persons for whose benefit the suit is brought and shall be apportioned among them by the court in proportion to the loss they may severally have suffered by reason of the death of the person by whose representative the suit is brought."

While there is no express language in the Jones Act or The Federal Employers' Liability Act regarding the allocation or apportionment of damages, it is not unusual at the trial for the fact-finding instrumentality, be it jury or court, to apportion the damages to each party entitled thereto in a Jones Act case. *In Re Southern Steamship Company's Petition*, 135 F. S. 358.

POINT III.

The Administratrix is unable to meet her legal obligation.

Since the Administratrix is unable to present evidence as to pecuniary loss to the infant son, the child will not be afforded adequate representation.

Permission to permit participation at the trial of the attorney for the infant's guardian is not unprecedented. In the case of *Sgrille v. Waterman S. S. Corporation*, 84 F. S. 718, the District Court permitted both the wife and the mother of the illegitimate child to be represented by counsel. The court recognized the antagonism between the legal wife and the mother of an illegitimate child. On appeal, the propriety of this action was reviewed by the United States Court of Appeals for the Second Circuit in *Civil (Sgrille) v. Waterman Steamship Corp.*, 217 F. 2d 94, at page 98. The court questioned the correctness of the decision, but found no error in this regard which would

prejudice the respondent. The court held that it would be a positive advantage to it to have all interests clearly represented and taken care of in one action.

Conclusion.

The petition for *certiorari* should be granted.

Respectfully submitted,

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